

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

GERARDO VASQUEZ NEGRETE,

Plaintiff,

v.

U.S. CITIZENSHIP AND  
IMMIGRATION SERVICES; U.S.  
IMMIGRATION AND CUSTOMS  
ENFORCEMENT; EXECUTIVE OFFICE  
FOR IMMIGRATION REVIEW,

Defendants.

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Cause No. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1. Plaintiff Gerardo Vasquez Negrete (“Mr. Vasquez” or “Plaintiff”) brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to compel Defendants, United States Citizenship and Immigration Services (“USCIS”), Executive Office of Immigration Review (“EOIR”), and United States Immigration and Customs Enforcement (“ICE”), to produce records responsive to multiple FOIA requests he filed seeking his immigration records.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction under 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B). Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

**PARTIES**

3. Plaintiff Gerardo Vasquez is a thirty-seven-year-old man who was born in Mexico City, Mexico. Plaintiff currently resides in Mesquite, Texas.

4. Defendant USCIS is a component agency of the Department of Homeland Security (“DHS”) and is responsible for the administration of immigration adjudication functions and the

establishment of policies and priorities for immigration services. USCIS is an agency within the meaning of 5 U.S.C. § 552(f)(1).

5. Defendant EOIR is a component agency of the Department of Justice. See 8 C.F.R. § 1003.0(a). EOIR is an agency within the meaning of 5 U.S.C. § 552(f)(1). EOIR is responsible for interpreting and administering federal immigration laws and encompasses both the Immigration Courts and the Board of Immigration Appeals.

6. Defendant ICE is a component agency of DHS and is responsible for enforcing federal immigration laws. ICE is an agency within the meaning of 5 U.S.C. § 552(f)(1).

7. Defendants, USCIS, EOIR, and ICE, have control over the records Plaintiff seeks.

### **FACTUAL BACKGROUND**

8. Mr. Vasquez is a thirty-seven-year-old man who was born in Mexico City, Mexico. He came to the U.S. from Mexico as a two-year-old child with his family. He grew up in Texas with his parents and siblings, six of whom are now U.S. citizens.

9. Mr. Vasquez derived citizenship through his mother under former 8 U.S.C. § 1432(a), and he is therefore a U.S. citizen by operation of law. As a U.S. citizen, Mr. Vasquez is not subject to removal and cannot be detained. Despite this, in January 2019, Defendant ICE initiated removal proceedings against Mr. Vasquez and detained him. In July 2019, an Immigration Judge denied Mr. Vasquez's motion to terminate removal proceedings, finding that Mr. Vasquez failed to prove by a preponderance of credible evidence that he is a U.S. citizen. He also denied Mr. Vasquez's claim for protection under the Convention Against Torture ("CAT"), based on his repeated targeting for harm in Mexico by both state and non-state actors. Mr. Vasquez has appealed to the Board of Immigration Appeals ("BIA").

10. In July 2019, after Mr. Vasquez applied for a writ of habeas corpus challenging the lawfulness of his detention in light of his derived U.S. citizenship, ICE released him from custody on parole. Although he is no longer detained, Mr. Vasquez's removal proceedings are ongoing. In addition, his habeas petition remains pending before a district court in Laredo, Texas.

11. The records Mr. Vasquez has requested from Defendants through FOIA likely contain critical and otherwise unavailable information relevant to Mr. Vasquez's defense to removal on the basis of his derivative U.S. citizenship claim and to his habeas petition. Mr. Vasquez has thus far been prevented from presenting this evidence in defense of his removal.

### **FOIA STATUTE**

12. The Freedom of Information Act (FOIA), 5 U.S.C. § 552, mandates disclosure of records held by a federal agency in response to a request for such records by a member of the public unless the records sought fall within certain narrow statutory exemptions.

13. Any member of the public may request records from an agency of the United States under FOIA. 5 U.S.C. § 552(a)(3). An agency that receives a FOIA request must respond in writing to the requester within 20 business days after receipt of the request. 5 U.S.C. § 552(a)(6)(A)(i). In its response, the agency must inform the requester whether it intends to comply with the request, provide reasons for its determination, and inform the requester of his or her right to appeal the determination. *Id.* FOIA provides for an extension of this deadline "[i]n unusual circumstances" but limits this extension to "ten working days." *Id.* § 552(a)(6)(B)(i).

14. FOIA requires an agency to timely disclose all records to a FOIA request that do not fall within nine narrowly construed statutory exemptions. 5 U.S.C. §§ 552(a)(3)(A); 552(b)(1)-(b)(9). FOIA also requires an agency to make reasonable efforts to search for responsive records. 5 U.S.C. § 552(a)(3)(C).

15. A FOIA requester is deemed to have exhausted all administrative remedies if the agency fails to respond to the request within statutory time limits. 5 U.S.C. § 552(a)(6)(C)(i).

16. Upon a requester's complaint, a district court has jurisdiction to enjoin an agency from withholding records and to order production of records subject to disclosure. 5 U.S.C. § 552(a)(4)(B).

### **PLAINTIFF'S FOIA REQUESTS**

#### **FOIA Request to USCIS on April 17, 2019 (Control Number: unknown, if any)**

17. On April 17, 2019, Plaintiff submitted a FOIA request to USCIS requesting the following records:

Copy of entire Alien records (A-files), Temporary files (T-files), Receipt Files (R-Files), and Work Files (W-files) and all other records on behalf of, by, for, or otherwise referencing the subject of record Gerardo Vasquez, specifically including but not limited to the following:

- All records related to a Form I-817 filed in 1992, receipt number SRC9214700188
- All records related to any Form I-817 filed or rejected
- All records related to a Form I-765 filed in or around 1999, receipt number SRC9918153418
- All records related to any Form I-765 filed or rejected
- All records related to any application made under the Family Unity Program or Family Fairness Act
- All records related to a Form I-485 or I-181 filed in 1998, receipt number SRC9903050438
- All records related to any Form I-485 filed or rejected
- All records related to a Form I-130 filed on SOR's behalf in or around 1993, receipt number SRC9320451142
- All records related to any Form I-130 filed on SOR's behalf

- All records related to any application for advance parole

*See* Ex. 1. This request also included a request for accelerated “track 3” processing of the request because Plaintiff is in removal proceedings.<sup>1</sup> *Id.*

18. That same day, USCIS sent an automatically generated “courtesy reply” email acknowledging receipt of this request. *See* Ex. 2. USCIS did not subsequently issue its standard acknowledgement letter, assign a control number, or otherwise issue any correspondence or reply to the request.

19. More than five months have passed since Plaintiff submitted its FOIA request to USCIS on April 17, 2019. To date, USCIS has not produced any documents responsive to the request.

**FOIA Request to ICE on February 15, 2019 (Control Number: 2019-ICFO-29060)**

20. On February 15, 2019, Plaintiff submitted a FOIA request to ICE requesting the following records:

A copy of any and all records found, including but not limited to the following: records related to any arrest and detention between 2012 and the present date; I-213s; records of sworn statements; Notices to Appear; records of reinstatement of removal; record of expedited removal; records related to care received while detained in Laredo, Texas or Houston, Texas; records relating to any request for release; correspondence between myself and any deportation officer or other ERO officer; records, memorandum, or other documents associated with any investigation into a claim to U.S. citizenship asserted by me or anyone else on my behalf.”

*See* Ex. 3. On February 26, 2019, Defendant ICE acknowledged that they received the request on February 15, 2019, and assigned it control number 2019-ICFO-29060. *See* Ex. 4.

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<sup>1</sup> USCIS uses a three-track FOIA processing system; Track 3 is an accelerated track for cases involving individuals who are to appear before an immigration judge. *See* [https://www.uscis.gov/sites/default/files/files/nativedocuments/USCIS\\_FOIA\\_Request\\_Guide.pdf](https://www.uscis.gov/sites/default/files/files/nativedocuments/USCIS_FOIA_Request_Guide.pdf).

21. On March 11, 2019, Defendant ICE produced an incomplete response of only some the records Plaintiff requested. *See* Ex. 5. The response stated that a “search of the ICE Office of Enforcement and Removal Operations (ERO) for records responsive to your request produced 7 pages that are responsive to your request,” and attached seven pages, composed of printouts of online displays of Plaintiff’s “Case Summary,” “Person History,” and “Encounter Summary.” *Id.* The seven pages were redacted pursuant to FOIA Exemptions 6, 7(C), and 7(E). *Id.*

22. On March 13, 2019, Plaintiff filed an administrative appeal of Defendant ICE’s incomplete response. *See* Ex. 6. The appeal detailed the documents requested in the original request and stated that a comprehensive search of all available records was not performed or that all available records responsive to the request were not produced. *Id.* Defendant ICE acknowledged receipt of the appeal on March 20, 2019, and assigned a control number, 2019-ICAP-00282. *See* Ex. 7.

23. On April 17, 2019, Defendant ICE granted the appeal, concluding “that a new search, or modification to the existing search, could be made” and remanding the request back to the ICE FOIA Office for “processing and re-tasking to the appropriate agency/office(s) to obtain any additional responsive documents, should they exist.” *See* Ex. 8.

24. More than seven months have passed since Plaintiff first submitted its FOIA request to ICE on February 15, 2019. More than five months have passed since Plaintiff’s appeal was granted and the request was remanded for an additional search. *Id.* To date, ICE has not made any further reply or produced any additional responsive records to the request.

**FOIA Requests to EOIR on February 15, 2019 (Control Number: 2019-19550) and March 28, 2019 (Control Number: 2019-26020)**

25. On February 15, 2019, Plaintiff submitted a FOIA request to EOIR requesting the following records:

A copy of the record of proceedings from Dallas, Texas, in 2012; Audio recording for all hearings held in Dallas, Texas, in 2012; A copy of the record of proceedings from Houston, Texas, in 2017; and Audio recording for all hearings held in Houston, Texas, in 2017.

*See* Ex. 9. On February 27, 2019, EOIR acknowledged receipt of the FOIA request and assigned it control number 2019-19550. *See* Ex. 10.

26. On March 28, 2019, Plaintiff through counsel submitted a second FOIA request to EOIR seeking additional records, including:

A complete copy of the record of proceedings held in San Antonio, Texas, in 2018, via televideo from detention facility in Laredo, Texas.

*See* Ex. 11. In a letter dated April 8, 2019, Defendant EOIR erroneously closed this request as a duplicate, although the two requests sought different records. *See* Ex. 12. Although closed as a duplicate, the second FOIA request was assigned control number 2019-26020. *Id.*

27. On May 20, 2019, counsel for Plaintiff called the EOIR FOIA Public Liaison and explained that this second FOIA request was erroneously closed as a duplicate. A representative from the EOIR FOIA Public Liaison's office reopened the request and said that agency would produce the audio recordings requested, but that it would not produce the record of proceedings because written transcripts are only created when the case is appealed. Plaintiff has not requested any transcripts, which are different from the record of proceedings.

28. Defendant EOIR has produced all audio recordings of all hearings requested by Plaintiff. *See* Ex. 13.

29. By letter dated May 23, 2019, Defendant EOIR stated, "The record of proceeding will be forwarded to you as soon as it becomes available." *Id.*

30. On October 1, 2019, undersigned counsel for Plaintiff received a phone call from EOIR's FOIA processing unit. In that phone conversation, Counsel explained to the EOIR

representative what records had been requested and which records had not yet been produced, and the EOIR representative stated that it would, at minimum, take several more weeks to produce the requested records.

31. By letter dated October 1, 2019, Defendant EOIR indicated Plaintiff's request would be closed as a duplicate, but it is unclear which request would be closed. *See* Ex. 14.

32. More than six months have passed since Plaintiff submitted its FOIA requests to EOIR on February 15, 2019, and May 23, 2019. To date, Plaintiff has not received the remainder of the responsive records—the record of proceedings—sought through FOIA requests filed with Defendant EOIR. By letter dated October 11, 2019, Plaintiff informed EOIR of the remaining pending requests. *See* Ex. 15.

33. As set forth above, Plaintiff has exhausted his administrative remedies with respect to each of the requests detailed above. 5 U.S.C. § 552(a)(6)(C)(i).

## **CAUSES OF ACTION**

### **FIRST CAUSE OF ACTION**

#### **Violation of the Freedom of Information Act, 5 U.S.C. § 552, for Failure to Conduct an Adequate Search for Responsive Records**

34. Plaintiff realleges and incorporates the allegations contained in the foregoing numerical paragraphs as if each such allegation was fully set forth herein.

35. Defendants have violated 5 U.S.C. § 552(a)(3)(C)-(D) by failing to make reasonable efforts to search for all records responsive to the FOIA requests detailed above. Defendants have no legal basis for failing to reasonably search for them.

36. Based on Defendants' violations, Plaintiff has a statutory right under FOIA, 5 U.S.C. § 552(a)(3)(A); 5 U.S.C. § 552(a)(4)(B), to injunctive relief compelling a reasonable and adequate search for and disclosure of the requested agency records.



37. Declaratory relief is authorized under 22 U.S.C. § 2201 because an actual and justiciable controversy exists regarding Defendants' improper withholding of agency records in violation of FOIA, as set forth in preceding paragraphs.

## **SECOND CAUSE OF ACTION**

### **Violation of the Freedom of Information Act, 5 U.S.C. § 552, for Failure to Disclose Responsive Records**

38. Plaintiff realleges and incorporates the allegations contained in the foregoing numerical paragraphs as if each such allegation was fully set forth herein.

39. Defendants have violated 5 U.S.C. § 552(a)(3) by failing to promptly disclose and make available all records responsive to the FOIA requests detailed above. Defendants have no legal basis for failing to disclose the responsive records.

40. Based on Defendants' violation, Plaintiff has a statutory right under FOIA, 5 U.S.C. § 552(a)(3)(A); 5 U.S.C. § 552(a)(4)(B), to injunctive relief compelling disclosure of the requested agency records.

41. Declaratory relief is authorized under 22 U.S.C. § 2201 because an actual and justiciable controversy exists regarding Defendants' improper withholding of agency records in violation of FOIA, as set forth in preceding paragraphs.

## **THIRD CAUSE OF ACTION**

### **Violation of the Freedom of Information Act, 5 U.S.C. § 552, for Failure to Respond Within Statutory Time Limits**

42. Plaintiff realleges and incorporates the allegations contained in the foregoing numerical paragraphs as if each such allegation was fully set forth herein.

43. Defendants have violated 5 U.S.C. § 552(a)(6)(A) by failing to promptly disclose and make available all records responsive to the FOIA requests detailed above within the statutory time limits. Defendants have no legal basis for failing to disclose the responsive records.

44. Based on Defendants' violation, Plaintiff has a statutory right under FOIA, 5 U.S.C. § 552(a)(3)(A); 5 U.S.C. § 552(a)(4)(B), to injunctive relief compelling disclosure of the requested agency records.

45. Declaratory relief is authorized under 22 U.S.C. § 2201 because an actual and justiciable controversy exists regarding Defendants' improper withholding of agency records in violation of FOIA, as set forth in preceding paragraphs.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court:

- (a) Order Defendants to expeditiously conduct a reasonable and adequate search for responsive records, and disclose and make available to Plaintiff the responsive records;
- (b) Declare that Defendants' failure to conduct a reasonable and adequate search for responsive records violates 5 U.S.C. § 552(a)(3)(C)-(D);
- (c) Declare that Defendants' failure to disclose and make available to Plaintiff all responsive records violates 5 U.S.C. § 552(a)(3);
- (d) Declare that Defendants' failure to conduct a reasonable search and disclose the responsive records in accordance with statutory time limits violates 5 U.S.C. § 552(a)(6)(A);
- (e) Award Plaintiff reasonable attorney's fees and other litigation costs pursuant to 5 U.S.C. § 552(a)(4)(E); and

(f) Grant any other such relief as the Court may deem just and proper.

Dated: October 16, 2019

Respectfully Submitted,

By: /s/ Ranjana Natarajan

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